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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/560,447	04/28/2000	Steve A. DeLuca	MFCP.70155	3196

7590 02/04/2004

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EXAMINER

CHOUDHARY, ANITA

ART UNIT	PAPER NUMBER
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2153

DATE MAILED: 02/04/2004 11

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b> 09/560,447	<b>Applicant(s)</b> DELUCA, STEVE A.	
	<b>Examiner</b> Anita Choudhary	<b>Art Unit</b> 2153	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 05 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1, 3-8, 10, 15, and 17-24.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

The amendment filed on January 30, 2004 has been entered. Claims 1, 8, 10, and 15 have been amended.

### *Response to Arguments*

See 37 CFR 1.193(a)(2) which provides for the inclusion of the proposed rejection(s) detailed below in the Examiner's Answer if applicant elects to file an appeal to the Board of Patent Appeals and Interferences in this proceeding. To be complete, such rejection(s) must be addressed in any brief on appeal.

Upon appeal and entry of the amendment:

Claims 1, 3, 4, 6, 7, 8, 10, 12, 13, 20, 21, 23 and 24 would be rejected for the reasons set forth in the **35 USC § 102(e) rejection as being anticipated by U.S. Patent 6,269,401 assigned to Fletcher et al.** of the final Office Action mailed November 5, 2003.

Claims 15 and 17-19 would be rejected for the reasons set forth in the **35 USC § 102(e) rejection as being anticipated by U.S. Patent 6,453,346 to Garg et al.** of the final Office Action mailed November 5, 2003.

Claims 5 and 22 would be rejected for the reasons set forth in the **35 USC § 103(a) rejection as being anticipated by U.S. Patent 6,269,401 assigned to Fletcher et al.** of the final Office Action mailed November 5, 2003.

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Applicant's arguments filed January 5, 2004 have been fully considered but they are not persuasive.

In referring to claim 1, 8, and 10, Applicant argues that Fletcher does not and cannot teach “client management data collected at each of the two or more client machines is also stored and averaged at each such respective client machine”. In response, Fletcher does, in fact, teach these limitations. Fletcher suggests capturing multiple client management data sets, storing the management sets, and averaging the client management data set at each respective client machine. Although Fletcher only points to one computer system (110) thought out the specification, Fletcher has made it clear that a plurality of separate and distinct computer systems (110) can be employed and are well within the scope of the invention (col. 5 lines 57-67). Furthermore, Fletcher shows the central computer system cataloging the received information by the identity of each computer system providing the information (col. 6 lines 46-50). As figure 7 and the corresponding explanation on col. 24 lines 20-36 point out, **each** computer system (110) is responsible for collecting and averaging performance and capabilities information.

Applicant also argues that Fletcher does not show “capacity planning data”. However, Applicant’s specification shows that “capacity planning data” can consist of CPU utilization information, queue length, and a count of I/O operations. (page 19 lines 9-10). Fletcher shows the collection of similar data (col. 8 line 42- col. 9 line 11). Therefore, Fletcher teaches all the claim limitations of claims 1, 8, and 10.

In referring to claim 15, Applicant argues that Garg does not show means for separately averaging the stored client management data. However, Garg does show separate means for averaging client data. The cognitive signature module (34) generates multiple cognitive

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signatures based on data collected for a particular device (col. 4 lines 37-49). Separate signatures are created for separate network devices. Specifically addressing the limitation of claim 15, Garg shows: One or more computer-readable media having computer-executable modules (more than one network monitors 22, col. 3 lines 61-67) comprising:

- Means for collection client management data (fig. 2, 30,32),
- Means for storing the client management data for a selected time interval (30),
- Means for separately averaging the stored client management data over the selected time interval (34),
- Means for transmitting the averaged client management data to a central location (36).

Therefore, Garg teaches the limitation of claim 15.

In referring to claim 19, Applicant argues that Garg does not show “capacity planning data” being converted from “performance monitoring data” for long term network purposes. Garg shows the converting of performance data in to capacity planning data for network purposes. Specifically addressing the limitation of claim 19: Garg shows: performance monitoring data (data collected at 30, 32) is converted in to capacity planning data (by the cognitive signature module 34) before the data structure is transmitted to the central location (storage device 36) for capacity planning purposes (analysis module, 38) (col. 5 lines 20-25, col. 5 line 66 –col. 6 line 6). Therefore, Garg teaches the limitations of claim 19.

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***Conclusion***

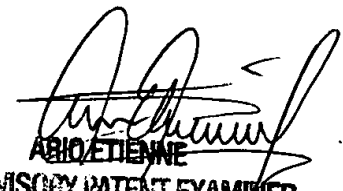
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita Choudhary whose telephone number is (703) 305-5268.

The examiner can normally be reached on 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached on (703) 305-4792. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AC  
January 30, 2004

  
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